



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200647030

AUG 28 2006

T:EP:RA:T3

Uniform Issue List: 408.01-00

Legend:

Decedent A =

Individual B =

Individual C =

Individual D =

Amount E =

State F =

Court G =

Date L =

Date M =

Date N =

Date P =

Date Q =

Date R =

Company W =

IRA X =

200647030

Dear

This is in response to your request for a private letter ruling, submitted by your authorized representative by letter dated January 26, 2006, concerning the proper treatment of amounts in Decedent A's individual retirement Account (IRA X) under sections 401(a)(9) and 408(d)(3) of the Internal Revenue Code (Code). Correspondence dated March 3, 2006, and June 23, 2006, supplemented the request.

Your authorized representative has submitted the following facts and representations:

Decedent A was born on Date L, 1929 and died on Date M, 2003, while a resident of State F, at age 74, having attained his required beginning date as that term is defined in section 401(a)(9)(C) of the Code. Decedent A is survived by two children, you, and Individual B. You, the daughter of Decedent A, were born on Date N, 1957, and were alive at the date of this ruling request.

Decedent A died testate, and his estate is being administered in accordance with his Last Will and Testament and related codicils (the "Will"). In accordance with Article THIRTEENTH of the Will, you and Individual C were appointed as executors of Decedent A's estate. The Will was duly admitted to probate on Date Q, 2004 in Court G.

As of his date of death, Decedent A was the owner of a rollover individual retirement arrangement (IRA), IRA X, maintained with Company W. As of Date P, 2005, IRA X has a value of approximately Amount E.

At his date of death, Decedent A had been predeceased by his spouse, Individual D, whom Decedent A had previously designated as the beneficiary of IRA X. Following her death, however, by means of a beneficiary designation dated Date R, 2003, Decedent A named his estate as the beneficiary of his IRA X.

Under Article FOURTH, Paragraph (B) of the Will, you and Individual B are the equal beneficiaries of Decedent A's estate, and are entitled to benefit from IRA X.

You, and Individual C, as co-executors of the estate of Decedent A propose to transfer, by means of trustee-to-trustee transfers, in equal shares, IRA X into two newly created IRAs. One would be titled Decedent A (Deceased) f/b/o (your name), beneficiary thereof. The other would be titled Decedent A IRA (Deceased) f/b/o (Individual B), beneficiary thereof. The inherited IRAs will continue to meet the minimum distribution requirements of section 401(a)(9) of the Code, and distributions from the IRA of which you will be the beneficiary will be based on the

remaining life expectancy of Decedent A, with distributions therefrom made without regard to the IRA set up to benefit Individual B.

The funds in IRA X remain undistributed, except that the required minimum distributions have been made.

Based on the foregoing, you request the following rulings:

1. That your one-half interest of Decedent A's IRA X can be segregated and held in a separate inherited sub-IRA for purposes of determining your minimum required distributions under section 401(a)(9) of the Code;
2. That the IRA created by means of a trustee to trustee transfer, which will be titled "Decedent A (Deceased) f/b/o (Your name), beneficiary thereof", constitutes an inherited IRA under section 408(d)(3) of the Code;
3. That the minimum required distribution requirement under section 401(a)(9) of the Code from your sub-IRA may be met by distributing amounts annually from your distinct IRA calculated using Decedent A's remaining life expectancy using the age of Decedent A as of his birthday in the calendar year of his death, reduced by one for each subsequent calendar year in accordance with section 1.401(a)(9)-5 Question & Answer-5 of the Income Tax Regulations; and
4. That the transfer of your one-half interest in Decedent A's IRA to an IRA in Decedent A's name for your benefit will not constitute a distribution within the meaning of section 408(d)(1) of the Code, nor will it be considered an attempted rollover from IRA X to your distinct IRA.

With respect to your ruling requests, section 401(a)(9)(B)(i) of the Code provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (after his required beginning date), the remaining portion of his interest must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

Final Income Tax Regulations (regulations) under sections 401(a)(9) and 408(a)(6) of the Code were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003

Section 1.401(a)(9)-4 of the regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

Section 1.401(a)(9)-4 of the regulations, Q&A-3, provides that only individuals maybe designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-5 of the regulations, Q&A- 5(a)(2) provides, in summary, that if an employee dies on or after his required beginning date without having designated a beneficiary, then post-death distributions must be made over the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of A-5.

Section 1.401(a)(9)-5 of the regulations, Q&A- 5(c)(3) provides, in general, that, with respect to an employee who does not have a designated beneficiary, the applicable distribution period measured by the employee's remaining life expectancy is the life expectancy of the employee using the age of the employee as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year of the employee's death.

Section 1.401(a)(9)-9 of the regulations, Q&A-1, provides the relevant Single Life Expectancy Table.

Section 1.401(a)(9)-8 of the regulations, Q&A-2(a), provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, for years subsequent to the calendar year containing the date on which the separate accounts were established, or the date of death if later, a separate account under a plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of Code section 401(a)(9). Instead, the rules in Code section 401(a)(9) apply separately to each separate account under the plan.

Section 1.401(a)(9)-8 of the regulations, Q&A-3, provides that a separate account is a separate portion of an employee's benefit reflecting the separate interest of the employee's beneficiaries under the plan as of the date of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions and forfeitures, for the period

prior to the establishment of the separate accounts on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

Section 1.401(a)(9)-4 of the regulations, Q&A-5(c), provides, in relevant part, that the separate account rules are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit. In like manner, the "separate account" rules are not available to beneficiaries of an estate with respect to the estate's interest in an employee's plan or IRA interest.

Section 408(d)(1) of the Code provides, generally, that, in accordance with the rules of section 72, amounts paid or distributed from an IRA are included in the gross income by the payee or distributee.

Section 408(d)(3)(C) of the Code provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, you are Decedent A's daughter.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Finally, Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.

The issues raised in this ruling request are whether a beneficiary-daughter of an IRA holder may, after the death of the IRA holder, transfer her one-half interest in the deceased's IRA to an IRA set up to solely benefit her, and whether she may receive distributions from her beneficiary IRA over the deceased's remaining life expectancy without regard to the distribution decisions made by the other IRA beneficiaries.

Although neither the Code nor the regulations promulgated section 401(a)(9) of the Code preclude the posthumous division of IRA X into more than one IRA, the regulations do preclude "separate account" treatment for Code section 401(a)(9) purposes where amounts pass through an estate.

In this case, absent your decision to transfer, by means of a trustee-to-trustee transfer, your one-half interest in Decedent A's IRA X to your beneficiary IRA, as described above, distributions of the entire IRA X interest, including your one-half, would have to be made over Decedent A's remaining life expectancy in accordance with section 1.401(a)(9)-5 of the regulations, Q&A-5(c)(3). After the trustee to

trustee transfer, you will receive required distributions over Decedent A's remaining life expectancy. Thus, the trustee to trustee transfer will have no effect on the timing or amount of minimum required distributions.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code section 408(d).

Finally, since you are Decedent A's daughter, your one-half interest in Decedent A's IRA X constitutes an inherited IRA as that term is defined in section 408(d)(3)(C) of the Code. Thus, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

1. That your one-half interest of Decedent A's IRA X can be segregated and held in a separate IRA for purposes of determining your minimum required distributions under section 401(a)(9) of the Code,
2. That the IRA created by means of a trustee to trustee transfer, which will be titled "Decedent A (Deceased) f/b/o (Your name), beneficiary thereof", constitutes an inherited IRA under section 408(d)(3) of the Code
3. That the minimum required distribution requirement under section 401(a)(9) of the Code from your sub-IRA may be met by distributing amounts annually from your distinct IRA calculated using Decedent A's remaining life expectancy using the age of Decedent A as of his birthday in the calendar year of his death, reduced by one for each subsequent calendar year in accordance with section 1.401(a)(9)-5 Question & Answer-5 of the Income Tax Regulations; and
4. That the transfer of your one-half interest in Decedent A's IRA to an IRA in Decedent A's name for your benefit will not constitute a distribution within the meaning of section 408(d)(1), nor will it be considered an attempted rollover of the IRA to you.

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the transferee IRA to be set up to benefit you will also meet the requirements of Code section 408(a) at all times relevant thereto. Finally, please note that in accordance with section 408(d)(3)(E) of the Code, a required distribution must be made from the IRA to be set up to benefit you no later than December 31, 2006 if such distribution is not taken from IRA X prior to the transfer described above.

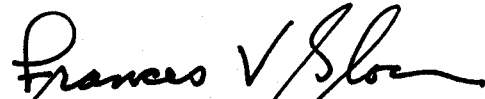
This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions, please call
toll free number).

(ID -) at () - (not a

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan". The signature is fluid and cursive, with a large initial "F" and a stylized "S".

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Notice of Intention to Disclose
Deleted Copy of Ruling

CC: